UNITED
NATIONS

E

Economic and Social
Council

Distr.
GENERAL

E/CN.4/Sub.2/1999/29
15 June 1999

Original: ENGLISH

COMMISSION ON HUMAN RIGHTS

Sub-Commission on Prevention of Discrimination
and Protection of Minorities
Fifty-first session
Item 12 of the provisional agenda

REVIEW OF FURTHER DEVELOPMENTS IN FIELDS WITH WHICH THE SUB-COMMISSION HAS BEEN OR MAY BE CONCERNED

Observance of human rights by States which are not parties to United Nations human rights conventions

Working paper submitted by Mr. Vladimir Kartashkin in accordance with Sub-Commission decision 1998/115

[Original: Russian]

GE.99-13725 (E)

CONTENTS

		Paragraphs	P
Introduction		1 - 3	
I.	LEGAL FORCE OF THE UNIVERSAL DECLARATION OF HUMAN RIGHTS	4 - 7	
II.	OBLIGATIONS OF STATES ARISING FROM THE CHARTER OF THE UNITED NATIONS AND FROM THE UNIVERSAL DECLARATION OF HUMAN RIGHTS	8 - 16	
III.	WAYS AND MEANS OF ENCOURAGING ACCEPTANCE OF HUMAN RIGHTS INSTRUMENTS	17 - 21	
IV.	MECHANISM FOR ENCOURAGING EFFORTS BY STATES TO OBSERVE THE HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS CONTAINED IN THE UNIVERSAL DECLARATION, AND THEIR RATIFICATION OF UNITED NATIONS HUMAN RIGHTS CONVENTIONS	22 - 29	
Annex:	Draft resolution of the Sub-Commission		

Page
3
3
5
8
10
14

Introduction

1. In its decision 1998/115 of 26 August 1998 the Sub-Commission on Prevention of Discrimination and Protection of Minorities, having discussed the question of the fiftieth anniversary of the Universal Declaration of Human Rights and the encouragement of acceptance of human rights instruments, requested Mr. Vladimir Kartashkin to prepare, without financial implications, a working paper on ways in which the Sub-Commission could examine the observance of the human rights and fundamental freedoms contained in the Universal Declaration of Human Rights by States not parties to United Nations human rights conventions and to submit it at the fifty-first session of the Sub-Commission. The Sub-Commission also decided to amend the title of the sub-item entitled "Encouragement of universal acceptance of human rights instruments" by adding the words "and observance of the human rights and fundamental freedoms contained in the Universal Declaration of Human Rights by States which are not parties to United Nations human rights conventions", and to make this an annual sub-item of the agenda.

2. The historic commemoration of the fiftieth anniversary of the Universal Declaration of Human Rights has shown that States must redouble their efforts to implement all the articles of this most important international instrument in full. It is thus entirely appropriate that the Secretary-General and the United Nations High Commissioner for Human Rights should in January 1999 have launched an appeal to all Governments to sign and ratify, within the next five years, the two International Covenants on Human Rights and at least the four principal conventions obliging States to observe the fundamental rights and freedoms proclaimed in the Universal Declaration.

3. It will be necessary, in this connection, to examine briefly the legal force of the Universal Declaration of Human Rights; the obligations of States arising from the Charter of the United Nations and from the Universal Declaration of Human Rights; ways and means of encouraging acceptance of human rights instruments; and machinery to encourage States to observe the human rights and fundamental freedoms contained in the Universal Declaration and to ratify the principal United Nations human rights conventions.

I. LEGAL FORCE OF THE UNIVERSAL DECLARATION OF HUMAN RIGHTS

4. The Universal Declaration, adopted by the General Assembly of the United Nations on 10 December 1948, heralded a new era in the development of relations among States. It was the first instrument in the world to set forth

a list of civil, political, economic, social and cultural rights "as a common standard of achievement for all peoples and all nations". The Universal Declaration was adopted as a resolution of the General Assembly, which under the Charter of the United Nations has the nature of a recommendation. However, when considering the legal force of its provisions, it must be borne in mind that, together with treaties, a significant role in standard-setting in international law is played by custom, which is formed as a result of the international practice of States and gradually becomes accepted by them as a binding legal norm. The 50 years since the adoption of the Universal Declaration have seen the adoption of many international human rights instruments developing the principles and norms contained in the Declaration, and these have gained universal acceptance. Thus, the rights and freedoms proclaimed in the Universal Declaration are now recognized by those taking part in international relations as legally binding customary or treaty norms.

5. Today, the Universal Declaration is one of the main sources of law and serves as a model that is widely employed by many countries for the elaboration of individual provisions of their constitutions and various laws and instruments relating to human rights. As emphasized by one study, "no fewer than 90 national constitutions drawn up since 1948 contain statements of fundamental rights which, where they do not faithfully reproduce the provisions of the Universal Declaration, are at least inspired by it". 1/ The overwhelming majority of the customary norms of international law contained in the Declaration have now become "jus cogens".

6. The generally recognized nature of the principles and norms embodied in the Universal Declaration is sometimes challenged, by making reference to historical, cultural and religious differences in the development of States. Such arguments are occasionally advanced by States not wishing to recognize fundamental rights and freedoms for their citizens. By declaring these rights to be the product of the development of Western civilization, they consequently deny the contribution of all the world's religions and cultures to this process. The rights and freedoms embodied in the Universal Declaration, such as the right to life, liberty and security of person, the prohibition of slavery and torture, the right to freedom of movement, the right to own property, freedom of thought, conscience and religion, the right to freedom of opinion and expression, the right to take part in the government of the State, the right to work and the right to a decent standard of living,

surely cannot be the product of the development of any single culture or religion. The fundamental rights and freedoms set forth in the Universal Declaration and in many international conventions quite clearly emerged and were accepted by the international community as a result of the contribution of most countries of the world, and of various cultures and religions.

7. All the rights embodied in the Declaration are universal, indivisible, interdependent and interrelated. This applies to civil and political as well as to economic, social and cultural rights. It is, of course, impossible to deny the significance of the national, historical, cultural, religious and other particularities of the development of individual countries. However, they are all bound to observe fundamental human rights and freedoms. This understanding was reflected in the Vienna Declaration and Programme of Action adopted by the World Conference on Human Rights, held in Vienna in 1993, which states: "The international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis. While the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind, it is the duty of States, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms" (author's emphasis). This universal duty stems primarily from the Charter of the United Nations and from the Universal Declaration of Human Rights.

II. OBLIGATIONS OF STATES ARISING FROM THE CHARTER OF THE UNITED NATIONS AND FROM THE UNIVERSAL DECLARATION OF HUMAN RIGHTS

8. The Charter of the United Nations, as a fundamental international treaty, contains principles and norms which are binding for all States of the world. The Charter was drafted and adopted after a complex diplomatic struggle and search for compromise solutions and a mutually acceptable formulation. The delegations of some countries insisted on the listing of a range of fundamental human rights and freedoms in this document. However, most of the founders of the United Nations felt that a list of such rights, which would be binding for all Member States, should be drawn up later and included in a separate document. As a result of the compromise reached, Article 1, paragraph 3, of the Charter of the United Nations defines one of the Organization's purposes as being "to achieve international cooperation in solving international problems of an economic, social, cultural, or

humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion". However, the Charter does more than simply refer to the promotion and encouragement of respect for human rights and fundamental freedoms. It makes it the duty of States to promote "universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion" (Art. 55 (c)). All Member States pledged themselves to take joint and separate action in cooperation with the Organization for the achievement of that purpose (Art. 56).

9. It is now generally recognized that the provisions of the Charter of the United Nations are binding for all States of the world. Moreover, the principle of respect for human rights, as laid down in this universal international treaty, means that States have a duty to ensure fundamental rights and freedoms for all people within their borders and under their jurisdiction, without discrimination of any kind. 2/

10. Once they had adopted the Charter of the United Nations, the Member States proceeded to draft the Universal Declaration of Human Rights. Following lengthy and detailed discussion it was adopted by the Member States. Moreover, not a single State voted against the adoption of the Declaration.

11. Article 1 of this instrument recognizes the natural character of human rights and proclaims that "all human beings are born free and equal in dignity and rights". They are equal from the moment of birth, and thereafter the situation of the individual in society and the concrete realization of rights and freedoms greatly depend on his abilities and work and on the particular socio-economic policy pursued by the State.

12. Natural rights and freedoms must be granted to every individual, regardless of where and in what State he lives. They cannot be defined exclusively by the State. A specific list of these rights was incorporated into the Universal Declaration and then developed in the International Covenants on Human Rights. As a result of the customary and treaty practice of states they have become binding for all countries of the world, and every State must incorporate these rights into its legislation.

13. What fundamental human rights and freedoms embodied in the Declaration have been reaffirmed in the human rights conventions adopted by the United Nations? These rights may be divided into three categories:

(a) Civil rights: the right to life, liberty and security of person; the prohibition of all forms of slavery; the prohibition of torture; rights relating to the administration of justice; the prohibition of arbitrary interference with a person's privacy, family, home or correspondence, or attacks upon his honour and reputation; the right to freedom of movement and residence, including the right to leave any country and to return to one's own country; the right to political asylum; the right to a nationality; rights relating to marriage and the founding of a family; the right to freedom of thought, conscience and religion; the right to freedom of opinion and expression; and the right to freedom of peaceful assembly and of association;

(b) Political rights: the right of everyone to take part in the government of his country, directly or through freely chosen representatives; the right of everyone to equal access to public service in his country; and the right of everyone to take part in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures;

(c) Economic, social and cultural rights: the right of everyone to work, including free choice of employment, just and favourable conditions of work and protection against unemployment; the right to equal pay for equal work; the right of everyone who works to just and favourable remuneration ensuring an existence worthy of human dignity; the right of everyone to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay; the right of everyone to an adequate standard of living; the right of everyone to social security; the right of everyone to form and join trade unions for the protection of his interests; the right of everyone to education; and the right of everyone freely to participate in the cultural life of a country, to enjoy the benefits of scientific advancement and protection of his moral and material interests resulting from scientific, literary or artistic production.

14. The process of universalization of human rights, begun with the Charter of the United Nations and continued with the Universal Declaration, has led to radical changes in international law. As declared by the States participating in the 1991 Moscow Meeting of the Conference on the Human Dimension of the Conference on Security and Cooperation in Europe (CSCE), human rights are "of direct and legitimate concern to all participating States and do not belong exclusively to the internal affairs of the State concerned". 1/

15. The bounds of States' domestic jurisdiction do not remain unchanged, they are historically mobile. States themselves define such limitations by making particular issues of inter-State relations subject to international legal regulation. Thus, after the adoption and ratification of the Universal Declaration, the Covenants and other international human rights instruments by the overwhelming majority of States Members of the United Nations, it can no longer be held that human rights belong within the internal competence of States. Preventing violations of human rights, whether massive and systematic or individual, is the concern of the international community as a whole.

16. Today, the norms of international law not only oblige States to ensure the fundamental rights and freedoms reaffirmed in international instruments, but also entitle the individual to call upon the State to fulfil its international obligations. Indeed, such claims may be the subject not only of domestic but also of international proceedings, for which provision is made both at the universal level (Human Rights Committee, Committee against Torture, etc.) and in regional forums (European Court of Human Rights, etc.). Moreover, various principal and subsidiary organs of the United Nations, including the Sub-Commission on Prevention of Discrimination and Protection of Minorities, in their meetings regularly consider both massive and individual violations of fundamental human rights and freedoms. All of this demonstrates that human rights have become a matter of international legal regulation and international protection, and the individual is considered to be a subject of international law with a clearly defined legal personality.

III. WAYS AND MEANS OF ENCOURAGING ACCEPTANCE OF HUMAN RIGHTS INSTRUMENTS

17. Today, as already indicated, the overwhelming majority of States have become parties to international human rights instruments. By 22 February 1999, 141 States had acceded to the International Covenant on Economic, Social and Cultural Rights, and 144 to the International Covenant on Civil and Political Rights. A total of 153 States had become parties to the International Convention on the Elimination of All Forms of Racial Discrimination, and 112 to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Only the Convention on the Rights of the Child has been signed and ratified by virtually all countries of the world. These figures demonstrate that quite a number of States have not yet ratified the principal international human rights instruments and thus

have not come under the supervision of United Nations treaty bodies. This situation cannot be regarded as normal, since all States have concrete obligations to observe specific human rights and fundamental freedoms.

18. The Sub-Commission has for a number of years been considering the question of encouraging universal acceptance of human rights instruments. At its thirty-second session, the Sub-Commission adopted resolution 1 B (XXXII) of 5 September 1979 by which it decided to establish each year a sessional working group composed of five of its members representing various geographical regions of the world to consider ways and means of encouraging States to ratify international human rights instruments. That resolution listed the following instruments: the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, the Optional Protocol to the International Covenant on Civil and Political Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Prevention and Punishment of the Crime of Genocide, the International Convention on the Suppression and Punishment of the Crime of Apartheid, the Slavery Convention, the Protocol amending the Slavery Convention signed at Geneva on 25 September 1926, the Supplementary Convention on the Abolition of Slavery, the Slave Trade and the Institutions and Practices similar to Slavery, and such other instruments as might be designated in the future by the Sub-Commission. At its thirty-third session in 1980 the Sub-Commission decided to add the following instruments to that list: the International Convention against the Taking of Hostages of 1979 and the Convention on the Elimination of All Forms of Discrimination against Women of 1979. In 1982 the list was further expanded to include the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others (Sub-Commission resolution 1982/3 of 7 September 1982).

19. In the above-mentioned resolution 1 B (XXXII), the Sub-Commission requested the Secretary-General of the United Nations, well before its annual sessions, to write to States which had not yet acceded to the instruments indicated, requesting them to provide information about any circumstances impeding ratification of the international instruments and any particular difficulties in respect of which the United Nations could offer assistance. The resolution invited the sessional working group of the Sub-Commission to examine the replies received from States and, if necessary, to invite their

representatives for discussions with a view to providing further information; and to consider, in appropriate cases, what essential assistance could be provided to States by the United Nations to help them ratify the human rights instruments as speedily as possible. The Sub-Commission decided to consider the report of the sessional working group at its sessions each year.

20. At a number of its annual sessions the working group examined replies received from States, heard clarifications from their representatives and discussed various procedural issues relating to its work (see E/CN.4/Sub.2/1982/1/Add.1; E/CN.4/Sub.2/1983/1/Add.1; E/CN.4/Sub.2/1984/Add.1). In 1984 the Sub-Commission decided to suspend the work of the working group (resolution 1984/36 of 30 August 1984), which did not thereafter resume its activities.

21. Action by the working group proved unsuccessful for a variety of reasons: the failure to elaborate precise and clear rules of procedure defining its methods of work; the sessional and non-continuous nature of its work during sessions of the Sub-Commission, which hampered detailed consideration of matters falling within its sphere of competence; the overburdening of the agenda with discussion of the reasons for non-ratification of many human rights instruments; the unwillingness of some States to cooperate with the working group and transmit information about factors impeding ratification of human rights instruments, and a number of other circumstances. However, the main reason for the lack of success in the work of the working group was that it examined the question of non-ratification of international human rights conventions by the States concerned without any reference to their observance of the fundamental rights and freedoms enshrined in the Universal Declaration and other United Nations instruments.

IV. MECHANISM FOR ENCOURAGING EFFORTS BY STATES TO OBSERVE THE HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS CONTAINED IN THE UNIVERSAL DECLARATION, AND THEIR RATIFICATION OF UNITED NATIONS HUMAN RIGHTS CONVENTIONS

22. The aim of the mechanism described below is to encourage efforts to observe the human rights and fundamental freedoms contained in the Universal Declaration by States which are not parties to the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and

Cultural Rights and a number of other conventions that place upon States the obligation to observe the particular rights embodied in the Universal Declaration.

23. In pursuance of this aim, which is exclusively one of providing encouragement, the proposed mechanism will make it possible to define areas in which United Nations assistance, extended primarily through technical cooperation and advisory services, may prove useful for States which are not parties to the main United Nations human rights conventions in applying the principles and norms contained in the Universal Declaration. It will not be a substitute for the existing treaty bodies or in any way interfere in their work. The proposed mechanism will function only in respect of States which are not parties to the United Nations human rights conventions and whose observance of human rights and fundamental freedoms is not monitored by United Nations treaty bodies.

24. In order to create this mechanism the Sub-Commission will need to adopt a resolution on the establishment for three years of an inter-sessional working group composed of at least five of its members serving in a personal capacity. Particular attention should be paid in this regard to equitable geographical distribution and the representation of the principal legal systems.

25. The working group will act on the basis of reports requested from States which are not parties to the International Covenant on Civil and Political Rights or the International Covenant on Economic, Social and Cultural Rights. If a given State is not a party to either Covenant, information will be requested in respect of each of them. Such information should be sought each year in relation to only one of the categories of rights listed in paragraph 13 of this working paper. Information will be requested on civil rights in the first year, on political rights in the second year, and on economic, social and cultural rights in the third year. The State concerned may furthermore be requested to provide information in respect not only of the International Covenants on Human Rights but also of other United Nations conventions governing aspects of the observance of the rights of the individual listed in paragraph 13 of this working paper. Thus, for example, when considering matters relating to the prohibition of slavery or torture, as covered by the International Covenant on Civil and Political Rights, the working group may request information about ratification of the conventions on

slavery, servitude and forced labour or the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, as well as about the observance thereof by the State concerned.

26. The working group should from the very outset confine itself to considering only specific issues relating to the observance by States of the fundamental rights and freedoms proclaimed in the Universal Declaration and reaffirmed in the International Covenants on Human Rights and a number of other strictly defined conventions governing the protection of those same rights. Otherwise, the working group will be unable to cope with the volume of information made available to it.

27. Reporting guidelines should be drawn up in such a way that exhaustive information can be obtained from the States concerned regarding observance of the fundamental human rights and freedoms contained in the Universal Declaration, on progress achieved in this respect, and also about any factors and difficulties affecting the extent to which they are observed. Additional information may be requested where necessary. If, after receiving a reminder, a State does not provide the information requested, the working group may decide to discuss matters relating to observance of fundamental rights and freedoms by that State on the basis of information made available to it by non-governmental organizations and other sources in accordance with the rules of procedure that have been established. Representatives of States and non-governmental organizations may take part in the discussion of the reports, which will be considered in the order of precedence decided by the working group.

28. When discussing country reports, the working group will make recommendations to the States concerned and also set forth views regarding the provision of assistance to them in meeting established or stated needs, including technical cooperation and advisory services, which may contribute to observance of the fundamental human rights and freedoms embodied in the Universal Declaration, as well as ratification of the International Covenants on Human Rights and other relevant United Nations conventions. This work of the working group will contribute to ensuring that, within the next few years, the appeal of the Secretary-General and the High Commissioner for Human Rights will be heeded and many States will sign and ratify the two International Covenants on Human Rights and the principal United Nations conventions in this field.

29. At the very outset the working group should draw up and adopt precise and clear rules of procedure defining its methods of work. Moreover, considering the importance of the matters to be raised for its discussion, which may become one of the main directions of work of the Sub-Commission, the working group should meet each year for at least two weeks well before the start of the Sub-Commission's session. The working group should report annually to the Sub-Commission on its sessional work.

Notes

1/ N. Jayawickrama, "Hong Kong and the International Protection of Human Rights", in Human Rights in Hong Kong (Hong Kong-New York, 1992), p. 160.

2/ See, for example, H. Lauterpacht, International Law and Human Rights (London, 1950), pp. 147-149; M. Ganji, International Protection of Human Rights (Geneva-Paris, 1962), pp. 116-119.

3/ Document of the Moscow Meeting of the Conference on the Human Dimension of the CSCE/International Cooperation in the Field of Human Rights. Documents and Proceedings (Moscow, 1993).

Annex

DRAFT RESOLUTION OF THE SUB-COMMISSION ON PREVENTION OF DISCRIMINATION AND PROTECTION OF MINORITIES

Observance of the human rights and fundamental freedoms contained in the Universal Declaration of Human Rights by States which are not parties to United Nations human rights conventions

The Sub-Commission on Prevention of Discrimination and Protection of Minorities,

Considering that, in accordance with the Charter of the United Nations, the observance of human rights and fundamental freedoms is of major importance in ensuring universal and lasting peace,

Considering also that the United Nations under its Charter has the task of promoting and encouraging respect for human rights and fundamental freedoms for all without distinction as to race, sex, language or religion and is to be a centre for harmonizing the actions of nations in the attainment of this end,

Considering further that the States Members of the United Nations, by adopting the Universal Declaration of Human Rights, reaffirmed their commitment to the observance of fundamental human rights, their faith in the dignity and worth of the human person and in the equal rights of men and women, and their determination to promote, in cooperation with the United Nations, the universal observance of civil and political as well as economic, social and cultural rights,

Considering that not all States are as yet parties to the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, which have embodied in treaty form the principles and norms contained in the Universal Declaration,

Considering also that States which are not parties to the International Covenants on Human Rights and other United Nations conventions in this field do not report to the United Nations on their observance of fundamental human rights and freedoms,

Mindful that States Members of the United Nations, even if they have not ratified the International Covenants on Human Rights and other United Nations conventions in this field, have obligations arising from the Charter of the United Nations and from the Universal Declaration to observe fundamental human rights and freedoms,

Desiring to provide States which have not ratified the International Covenants on Human Rights and other United Nations conventions in this

field with assistance in the promotion and observance of the fundamental human rights and freedoms proclaimed in the Universal Declaration,

1. Decides to establish, for a period of three years, an inter-sessional working group of the Sub-Commission composed of five of its members serving in a personal capacity, having due regard for equitable geographical distribution and the representation of the principal legal systems;

2. Invites the working group to request States which are not parties to the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights to submit reports on the observance of the Universal Declaration of Human Rights, legislative and other measures taken for its implementation, and progress achieved in this respect, as well as any factors and difficulties affecting the extent to which the human rights and fundamental freedoms contained in the Declaration are ensured;

3. Also invites the working group to adopt its own rules of procedure for the consideration of such reports and other information received from States and from non-governmental organizations;

4. Further invites the working group to make recommendations to States and also to set forth its views regarding the provision of assistance to them in meeting established or stated needs, including technical cooperation and advisory services, which may contribute to the observance of the fundamental rights and freedoms enshrined in the Universal Declaration, as well as the ratification and implementation of the International Covenants on Human Rights and other United Nations conventions in this field;

5. Invites the working group to submit annual reports to the Sub-Commission containing its recommendations and the views of States regarding the provision of assistance in meeting their established or stated needs which may contribute to the observance of the fundamental human rights and freedoms enshrined in the Universal Declaration, as well as the ratification of the International Covenants on Human Rights and other relevant United Nations conventions in this field;

6. Decides to convene sessions of the working group each year for a period of two weeks well before the regular session of the Sub-Commission;

7. Also decides to include this item in the annual agenda of the Sub-Commission as an important matter taking priority.